IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 510 of 2003 (M/S)

1. Pawan Kumar S/o Late Sri Murari Lal,
   R/o Suman Marg, Town Kotdwar,
   District Pauri Garhwal.
2. Indra Kumar S/o Late Sri Shanker Lal,
   R/o Suman Marg, Town Kotdwar,
   District Pauri Garhwal. ... Petitioners

Vs

1. Sri Bisheshwar Prasad S/o Sri Bhairav Datt,
   R/o Patel Marg, Town Kotdwar,
   District Pauri Garhwal.
2. Kailash Chandra Agarwal S/o Late Sri Mathura Prasad,
   R/o Patel Marg, Town Kotdwar,
   District Pauri Garhwal.
3. Prescribed Authority / Civil Judge,
   Junior Division, Town Kotdwar,
   District Pauri Garhwal. ... Respondents

Sri Sudhir Kumar, Advocate for the petitioners.
Sri B.D. Upadhyaya, Advocate for respondents Nos. 1 & 2.

Date: 30th August, 2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioners have prayed for setting aside the order dated 12.05.2003 passed by respondent No. 3 in Civil Misc. Case No. 8 of 1997.

Briefly stated, respondent No. 1 has preferred an application under Section 21(1)(a) of U.P. Act No. 13 of 1972 against respondent No. 2 praying for the release of the accommodation in his favour. Sri Govind Ram and Sri Mathura Prasad were the original tenant of the non-residential accommodation, who died and the petitioners, being grand sons of Late Sri Govind Ram, filed an application under Section 3(2)(a) of the U.P. Act No. 13 of 1972 for impleadment.

3. Prescribed Authority, vide impugned order dated 12.05.2003, has rejected the said application on the ground that the petitioners have already surrendered their tenancy rights and as such, they are not entitled to be impleaded as parties to the application under Section 21(1)(a) of the Act.

4. It is well settled that the question of surrender of the tenancy rights cannot be decided in a summary proceedings.

5. In view of the above, the Prescribed Authority, while deciding the application under Section 21(1)(a) of the Act, shall frame the points for determination of the comparative hardship between the petitioners and respondents Nos. 1 & 2.

6. Consequently, the order dated 12.05.2003 passed by respondent No. 3 in Civil Misc. Case No. 8 of 1997 is quashed. Petitioners are made parties to the application under Section 21(1)(a) of the Act. Prescribed Authority is also directed to decide the Misc. Case No. 8 of 1997 within a period of two months from the date of production of certified copy of this judgment.

7. With the above observations, the writ petition stands disposed of.

(Rajesh Tandon,)